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Claims Currently Being Examined/Election and Restriction Requirement

According to the Office Action Summary, the examiner states that
5 claims 1 through 4, 9, 13, 17, 21, 25 through 28 and 30 through 33 are
pending in the application and no claims have been withdrawn from
consideration. Claims 1, 2 and 30 are the independent claims.

No amendments to the claims are made by this paper.

10 Information Disclosure Statement

According to the Office Action Summary, the examiner also states
that the Office Action is responsive to communications filed on December
27, 2002.

On March 28, 2002, Applicant filed an Information Disclosure
15 Statement.

Applicant would like to thank the examiner for his consideration of the
Information Disclosure Statement submitted on March 28, 2002. However,
Applicant notes in the copies of Form PTO/SB/08A (3 pages) and Form
PTO/SB/08B (2 pages), submitted by Applicant and returned to Applicant by
20 the examiner, that the examiner has signed and placed his initials next to
only the references submitted on the first page of Form PTO/SB/08A.

Applicant respectfully requests that the examiner initial and execute
the remaining Forms PTO/SB/08A and PTO/SB/08B submitted by Applicant
on March 28, 2002, and return copies of the executed documents to
25 Applicant, or indicated to the Applicant why the Examiner cannot do so.

Claim Rejection 35 USC Section 102

The examiner has rejected claims 1 through 4, 9, 13, 17, 21, 25, 26
and 28 under 35 USC §102(b) as being unpatentable over US Patent
4,057,165, granted to Kurt Kardell (hereinafter Kardell).

30 The independent claims of the application are claims 1, 2 and 30.
While the examiner has not rejected claim 30 under 35 USC §102(b) under
Kardell, Applicant is discussing claim 30 here as well. The limitations
discussed below with respect to claims 1 and 2 are shared by claim 30.

Applicant notes that for a proper rejection under 35 USC §102(b), all
35 of the elements in the claim must be disclosed in the reference.

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1 Applicant notes that the examiner has failed to demonstrate that Kardell teaches all of the elements of independent claim 1, 2 and 30.

First, claims 1, 2 and 30 call for a "platform based container open sided". The term "platform based container open sided" as defined in the
5 specification and as used in the industry is a term of art having specific structural significance.

This term of art is defined in the specification at page 6, line 25: "The term 'platform based container open sided' is 'applied to any general cargo container which does not have rigid side walls or equivalent structures
10 capable of withstanding all of the loads that may be withstood or transmitted by a side wall of a general purpose container and which, for this reason has a base structure similar to that of a platform (container). (See 4.1.1.2.4).' ISO 830:1991, section 4.1.1.2.3."

The examiner has not shown that Kardell teaches "a platform based
15 container open sided" as claimed in claims 1, 2 or 30.

Furthermore, claims 1, 2 and 30 specifically describe the platform based container open sided as being "formed with corner fittings to allow stacking of said rectangular platform based container open sided with other said standardized freight containers".

20 The examiner has not demonstrated that such corner fittings are taught by Kardell.

Furthermore, claims 1, 2 and 30 require that an impermeable membrane be installed in the enclosed area or enclosure and that the impermeable membrane cover the base and extend up the enclosed area a
25 selected distance for containing waste produced by the livestock.

The examiner has not demonstrated that Kardell teaches an impermeable membrane that extends up the enclosed area a selected distance. In fact, it is Applicant's opinion that Kardell shows openings between the side panels and the base of the container. Applicant does not
30 believe that the pen of Kardell could contain the waste produced by livestock as called for in the claims.

With respect to claim 3, Applicant notes that the "posts" of Kardell are not shown with corner fittings that would allow the pen of Kardell to be stacked below other standardized shipping containers.

35 The only prior art reference cited against claims 1 through 4, 9, 13, 17, 21, 25, 26 and 28 is Kardell. Since Applicant does not believe Kardell

1 contains all of the limitations as claimed in claims 1, 2 or 3 and all of the dependent claims in the application depend from these independent claims, Applicant believes the rejection of any claims on the basis of Kardell alone is improper.

5 **Claim Rejection 35 USC Section 103**

The examiner rejected claim 27 under 35 USC §103(a) as being unpatentable over Kardell in view of US Patent 5,761,854, granted to Johnson et al.

As stated above, since Applicant does not believe that Kardell properly
10 discloses all of the elements of independent claims from which 27 depends, the rejection of this claim which is based on the combination of Kardell with another reference is improper.

Claim Rejection 35 USC Section 103

The examiner rejected claims 30 through 33 under 35 USC §103(a) as
15 being unpatentable over Kardell.

Claim 30 is an independent claim, containing all of the limitations discussed above with respect to the anticipation argument.

As above, since Applicant does not believe that Kardell contains all of the limitations of claim 30, the rejection of this claim and its dependent
20 claims without some other reference is improper.

Conclusion

Applicant believes that it has responded to all the issues raised by the examiner. Applicant believes that the claims as amended by the preliminary amendment filed July 30, 2001, are in condition for allowance and
25 application respectfully requests that the examiner reconsider the rejections of the claims.

The undersigned wishes to state that if the Examiner has questions about this response, the undersigned would be most happy to try to answer them on the telephone.

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Respectfully submitted,

Reg. No. 41,694

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Date: 10-8-03

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